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JUL 16 1959
JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1959.

No. 215

THE DENTON & ANDERSON COMPANY, *et al.*,
Petitioners,

vs.

THOMAS G. KAVANAGH, ADMINISTRATOR,
Respondent.

PETITION FOR WRIT OF CERTIORARI
To the United States Court of Appeals
For the Sixth Circuit.

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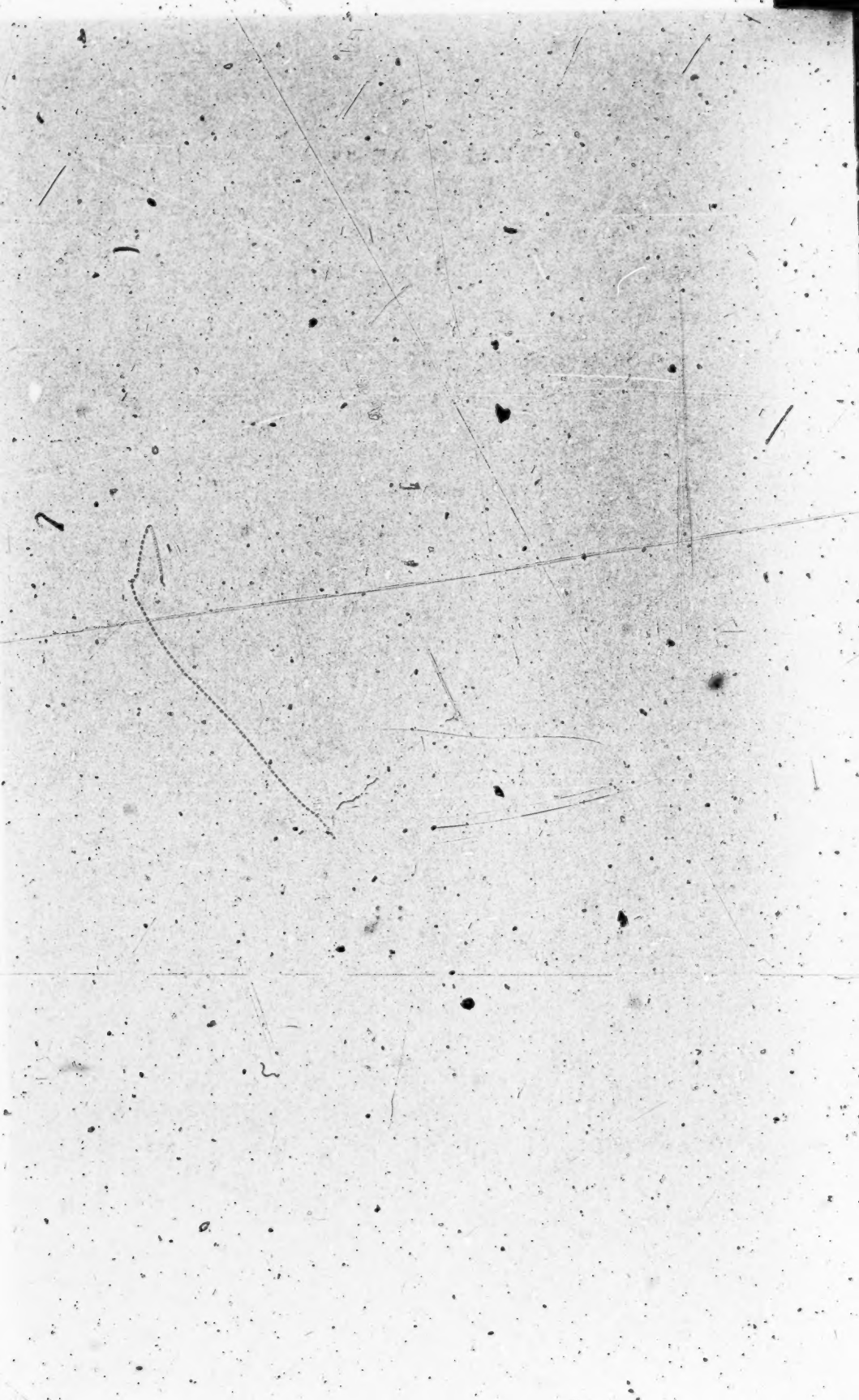

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PETITION FOR WRIT OF CERTIORARI To the United States Court of Appeals For the Sixth Circuit.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above entitled case on April 22, 1959.

CITATIONS TO OPINIONS BELOW.

The opinion of the District Court (R. 35a-56a)[1] is reported in 164 F. S. 372. No opinion was rendered in the Court of Appeals.

JURISDICTION.

The judgment of the Court of Appeals for the Sixth Circuit was entered on April 22, 1959, and is printed in Appendix B hereto, *infra*, p. 25. The jurisdiction of this Court is invoked under 28 U. S. C. § 1254 (1).

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[1] Reference to the printed record below will be by page number and paragraph number, if there be one, as follows: (R.). Nine extra copies of the record are filed herewith.

QUESTIONS PRESENTED.[1]

1. Whether, upon consolidated tax returns, the deductions by two members of an affiliated group of the entire amount of their losses resulting from their payments to a bank upon a guaranty of a V-loan of a subsidiary affiliate would constitute a "double deduction" to the extent such corporations had availed themselves of the operating loss of the subsidiary in a prior year through the filing of consolidated tax returns?

2. Assuming that the deductions for the guaranty losses are to be reduced by the operating loss of the subsidiary previously availed of by such guarantor corporations, are the deductions of one guarantor corporation to be reduced only to the extent such corporation utilized the operating loss of the subsidiary or may the deductions of one of the guarantor corporations be reduced by the operating loss of the subsidiary previously utilized by it plus a part of such operating loss previously utilized by the other guarantor corporation?

STATUTE AND REGULATIONS INVOLVED.

The statutory provision involved is § 141 of the Internal Revenue Code of 1939, as amended, 56 Stat. 858, 26 U. S. C. (1945 ed.), § 141. The Treasury Regulations promulgated under such statute and here involved are §§ 23.31 (b) and (d) and 23.40 of Treasury Regulations 104 (income tax) and the corresponding sections of Treasury Regulations 110 (excess profits tax).[2] They are printed in Appendix A, *infra*, pp. 16-25.

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[1] The parties stipulated as to the issues involved (R. 34a).

[2] Reference herein will be made only to the applicable sections of Regulation 104 as such sections are substantially identical to the corresponding sections of Regulations 110.

STATEMENT.

This petition is directed to a judgment of the Court of Appeals affirming a judgment for the defendant in the District Court in a suit for recovery of income and excess profits taxes assessed against petitioners for the years 1943, 1944 and 1945. The jurisdiction of the District Court was invoked because the case arises under an Act of Congress providing for internal revenue, 28 U. S. C. § 1340.

The petitioners, The Denton & Anderson Company (referred to herein as "D & A"), The Taylor-Winfield Corporation (referred to herein as "T-W"), and The Warren City Tank and Boiler Company (referred to herein as "Warren City"), were affiliated corporations[1] during the years 1942 through 1945 and filed consolidated tax returns for those years (R. 9a, 7).

T-W purchased all of the stock of Warren City on December 1, 1941 for $327,934.28. On February 13, 1942, Warren City procured a $2,000,000 V-loan from The National Bank of Detroit (referred to herein as the "Bank"), which was guaranteed by the United States Navy and T-W (R. 10a, 10). During the year 1942, Warren City sustained an operating loss of $1,415,380.97. In order to obtain additional working capital and to repay its $2,000,000 V-loan, Warren City procured a $4,000,000 V-loan from the Bank on February 15, 1943, which was likewise guaranteed by the United States Navy and T-W (R. 10a, 11).

The guaranty by T-W of the 1942 and 1943 V-loans of Warren City from the Bank resulted from a requirement of the Bank, as a member bank of the Federal Re-

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[1] D & A owned 96 per cent of the stock of T-W (R. 9a, 4) and T-W owned all of the stock of Warren City (R. 9a, 5).